IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

Writ Petition St. NO. 4027 OF 2006

Rameshchand M. Agarwal ..... Petitioner .
VS.
The State of Maharashtra and ors. . . ... Respondents

Mr. Vijayrao Kale and R. S. Kate for petitioner .

CORAM: D. G. KARNIK **J.**

DATE: 6th October 2006

P.C.:

1. Heard learned counsel for the petitioner.
2. This writ petition is directed against the order dated 15th February 2006 passed by the learned Civil Judge, Senior Division, Pune, rejecting the application of the petitioner (plaintiff) for amendment of the plaint.
3. The trial of the suit was commenced on 19th January 2006. The application for amendment was made on 25th January 2006, i.e., after 25th January 2006. Proviso to Rule 17 of Order 6 of the Civil Procedure Code provides that an application for amendment shall not be allowed after the trial has commenced, unless the court comes to the conclusion that in spite of due diligence, the parties could not have raised the matter before commencement of the trial. The trial court has also recorded a finding of fact that the plaintiff could have applied for amendment the plaint before

commencement of the trial. It is not shown how this finding is erroneous. The events in respect of which the amendment is sought have admittedly taken place prior to 19th January 2006. In the circumstances the petitioner could have and should have made an application for amendment before the commencement of the trial on 19th January 2006.

4. No error can be found in the reasoning of the trial judge. Hence writ petition is dismissed summarily.

(D.G. KARNIK J.)